IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.1579/2005

M/s.International Frozen Food Corp. .....Petitioners
! through: Mr.Bhupesh Narula, Advocate

VERSUS

$ The United India Assurance Co. Ltd.& Anr. .....Respondent
^ through: Mr.L.K.Tyagi, Advocate for R-1

% **D**ATE OF DECISION: 25.05.2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. By and under the present petition, petitioner has challenged the order dated 04.06.05.

2. Relevant facts necessary to be noted to appreciate the issue raised in the petition are that the petitioner owned a truck bearing No. HR-29B-1244. It was desirous of insuring the said truck and for said purpose approached respondent no.1 who is in the business of insurance. On 7.4.2000, a cheque

was issued by the petitioner to respondent no.1 towards premium payable for obtaining a policy of insurance for the truck. Receiving the premium tendered by and under a cheque, a cover note bearing No.063406 was issued by the respondent no.1 pertaining to truck bearing no. HR-29B-1244. The period for which the truck was to remain insured was mentioned as 7.4.2000 to 6.4.2001.

3. For unexplainable reasons, the insurance company kept the cheque paid towards premium with it and only on 24.4.2000 presented the said cheque for encashment. The banker of the petitioner on whom the cheque was drawn returned the cheque recording that the cheque was being returned because of insufficiency of funds in the account of the petitioner.

4. Unfortunately, the return memo issued by the bank was based on a misconception because admittedly there was sufficient money in the account of the petitioner for its banker to honour the cheque. Without any external intervention, realizing its mistake on its own, on 26.4.2000 the banker of the petitioner forwarded a banker's cheque in respect of the premium amount under cover of a letter admitting its mistake

that it had returned by mistake the cheque issued by the petitioner.

5. Notwithstanding the fact that respondent no.1 not only received the aforenoted banker's cheque sent to it by the petitioner's banker towards premium paid and also encashed the same, on 5.5.2000, respondent no.1 sent a letter to the petitioner cancelling the cover note no.063406. A fresh cover note was issued by the insurance company w.e.f. 26.4.2000 to 25.4.2001.

6. In the interregnum, on 13.4.2000 the truck was involved in an accident resulting in the death of Smt. Nanda Devi. Respondents 3 and 4 filed a claim petition seeking compensation on the ground that they were the dependents of Smt Nanda Devi.

7. The respondent no.1 predicated a defence that on the date of the accident, it was not liable to indemnify the insured for the reason original policy note dated 7.4.2000 was cancelled and was followed by a cover note issued on 5.5.2000 covering the period 26.4.2000 to 25.4.2001.

8. By and under the award dated 3.9.2004, the learned Tribunal returned a finding as under:-

> "However, as by way of positive evidence the insurance company proved that the earlier insurance policy was duly cancelled and the insured has not come forward to contest the same. I consider that insurance company should be given liberty to recover the awarded amount from the insured. Hence, the insurance company is given a liberty to recover the awarded amount from the insured as per law."

9. The petitioner did not challenge the award. Execution was sought by the insurance company after satisfying the award in favour of respondents 3 and 4. It sought to recover the awarded amount from the petitioner. The petitioner objected to the execution, inter alia alleging that the vehicle was duly insured as on date of the accident because the cover note issued when premium was paid by cheque was not cancelled when the accident took place and that the very fact of cancellation was contrary to law. It was further pleaded that the award did not vest any recovery rights in the insurance company and that the award only granted a liberty to file a substantive proceeding to establish recovery rights and thereafter, on success, recover the amount paid to the claimants.

10. Vide impugned order dated 4.6.2005, the learned Tribunal dismissed the objection filed by the petitioner holding that the award gave recovery rights to the insurance company

and having attained finality, had to be executed. It was further held that acting as an executing court, the Tribunal could not go behind the award.

11. Before dealing with the contentions urged at the bar by learned counsel for the parties it would be useful to note an event during the period the claim petition filed by respondents 3 and 4 was being adjudicated upon by the Tribunal.

12. Being a case of death at a road accident, interim compensation under Section 140 of the MV Act 1988 was payable to the claimants. Vide order dated 08.04.2003, interim application for interim compensation was allowed in favour of the claimants i.e. respondents no. 3 and 4 and compensation in sum of Rs.50,000/- was awarded in their favour. At that stage, respondent no.1 raised an objection that it was not liable to pay the interim compensation as the vehicle was not insured on the date of the accident i.e. 13.4.2000. Rejecting the said stand and noting the facts hereinabove noted by me pertaining to the cheque towards premium paid by the petitioner, cover note issued by the respondent no.1 for the period 7.4.2000 to 6.4.2001, the return of the cheque by the banker of the petitioner, the cancellation of the cover note

in May 2000 and issuance of a fresh cover note covering the period 26.4.2000 to 25.4.2001, the learned Tribunal recorded a finding as under:-

> “From the facts on record it is clear that on 13.4.2000, the day of accident the cover note no.063406 was in existence and it is not clear on record till date nor the R-3 has asserted in pleadings or placed on record any document showing as to when R-3 came to know of the dishonour of the cheque of the premium amount.
>
> x x x x x x x x x
>
> On the other hand, the case of the petitioner is well covered within the 4 corners of the judgment cited above of the Hon'ble Supreme Court.
>
> The observation of the Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Rula & Ors., 2000 ACJ 630 in para 6 of the judgment are as under:-
>
> > “Now, a contract of insurance, like any other contract, is concluded by offer and acceptance. Normally, a liability under the contract of insurance would arise only on payment of premium if such payment was made or condition precedent to the insurance policy taking effect. But such a condition which is intended for the benefit of the insurer can be waived by the insurer.”
>
> These observations clearly suggest that the insurer can waive or vary the terms and conditions of the contract of insurance policy which are beneficial to it. Judging in the light of above observation, if we read the intimation

> letter 5.5.2000 of this case whereinafter cancellation of the existing insurance cover note, further suggestion of the R-3 to the R-2 that the R-2 can afresh take the insurance policy by depositing the amount of the dishonoured cheque of the premium go to establish that what was revived by the policy no.040603/31/00/135/00 w.e.f 26.4.2000 to 25.4.2001 was nothing but a continuation of the previous cover note because the parties, the subject matter, the risk covered remains the same except the date of the risk. Thus, the R-3 failed to establish its case to the effect that the R-3 is not liable to make the payment of the compensation
>
> x x x x x x x x x
>
> Nothing said in this order above shall effect or prejudice the merits of the case."

13. Vide order dated 04.06.05 i.e. impugned order, while dismissing the application filed by the petitioner opposing the execution, the Tribunal functioning as the executing court has observed as under:-

> "Aforegoing conclusion drawn by the Tribunal that Insurance Company by way of positive evidence had proved that the earlier insurance policy was duly cancelled and the insured had not come forward to contest the same, leaves no scope to hear to the contrary by way of application in hand, filed by the responent no.2-JD no.2. Assuming, the Tribunal erred in reaching the said conclusion, the appropriate remedy there-against cannot lie by way of application in hand in the execution filed. Ld.

> Counsel for the applicant-JD no.2 on his part strenuously contested that the liberty reserved by the Tribunal for the Insurance Company to recover the Award amount from the insured as per law, in the given facts and circumstances, was a liberty to file a suit only, as according to him, the questions as regards the valid cancellation of the cover note effectively could only be adjudicated in a regular suit. Contention raised by the Ld. Counsel for the applicant, I consider, is equally merit less for the reason that the Tribunal by itself has gone into the dispute between the insurer-respondent no.3 and the owner-respondent no.2/JD no.2 and given its findings on that aspect. Having done so, the Tribunal has even proceeded to issue recovery certificate. Needless to say, the insurer-respondent no.3 paid the amount under the directions of the Tribunal and in view of the conclusions aforegoing drawn by the Tribunal, it is most equitable to recover by way of the execution proceedings, which are, of course are, in accordance with the law laid down. Reliance 2004 (I) scale 180 National Insurance Company Vs. Swaran Singh and Ors. , I (2004) ACC 524 (Supreme Court), OIC Vs. Nanjappan.
>
> In view of the aforegoing, I do not find any merit in the application and the same is hereby dismissed."

14. The maxim "*actus curiae neminem gravabit*" means that an act of court shall prejudice no man. No acts of court should harm a litigant and it is the bounden duty of a court to see that if a person is harmed by a mistake of court, he should be restored to the position he would have occupied but for that

mistake.

15. A perusal of the language used by the Tribunal in its award dated 3.9.2004 shows that the Tribunal has used inappropriate expression to convey the final direction. The language used by the Tribunal is that the insurance company is given liberty to recover the awarded amount from the insured as per law.

16. Normally, granting liberty to a person connotes that the court is permitting the person to take recourse to some other substantive remedy. As held by the Supreme Court in the decision reported as *National Insurance Co. Ltd. Vs. Swaran Singh & Ors.* 2004 (3) SCC 297, where complex questions of facts arise for consideration, the Tribunal can relegate the adjudication of the inter se dispute between the insurer and the insured at a regular civil trial. Thus, the petitioner was not unjustified in presuming that the award has not adjudicated on merits qua the issue of recovery rights and as and when and if the insurance company filed a suit, it could defend itself.

17. Though award dated 3.9.2004 has not been challenged in the petition with reference to a specific prayer, but I note that the petitioner has prayed for any other

appropriate relief to be granted to it.

18. Since all necessary facts and evidence are before me, it would be futile to relegate the parties to a civil trial for the reason only issue which needs to be decided is whether on the admitted facts aforenoted, insurance company would be entitled to recovery rights.

19. It is not in dispute that before the original cover note was cancelled, premium towards the policy had already been received by the insurance company. It is also not in dispute that on 13.4.2000 when the truck met with the accident, the original cover note had not been cancelled. It is not in dispute that the petitioner is not at fault and the inadvertent mistake by its banker of returning the cheque drawn on it towards the premium payable was rectified by the bank the very next day it issued the return memo. It is not a case where the insurance company had to notify the petitioner that the cheque towards premium was dishonoured and as a consequence the cover note issued was being cancelled. Under Rule 142 of the Central Motor Vehicle Rules 1989, a cover note remains valid for 60 days unless revoke earlier. Under Section 147 of the MV Act 1988 it is the duty of the

insurance company to issue a certificate of insurance and a policy of insurance after premium for issuance of the policy is received by it. Thus, the respondent no.1 could not have cancelled the original cover note. The period of insurance covered by the original cover note i.e. the period 7.4.2000 to 6.4.2001 covered the truck and its owner against all third party claims.

20. The petition is accordingly allowed. It is declared that the appellant is not liable to recompense respondent no.1 any amount in respect of the accident in question. It is declared that the respondent no.1 is not entitled to any recovery rights against the petitioner. The execution sought by respondent no.1 against the petitioner is dismissed.

21. No costs.

MAY 25, 2007 PRADEEP NANDRAJOG
sl/mm JUDGE